



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
Date Mailed: December 20, 2016
MAHS Docket No.: 16-016534
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on [REDACTED], from Ypsilanti, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Worker; and [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department properly close the Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) benefits for failure to provide verification?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner was an ongoing recipient of FAP benefits.
2. Pursuant to an Office of Inspector General (OIG) inquiry on [REDACTED], the Department was requested to verify the Petitioner's place of residence. Exhibit 1.
3. The OIG determined that the Petitioner had been using her benefits out of state in [REDACTED] since [REDACTED]. The OIG was proposing action to deny the Petitioner's FAP and MA. Exhibit 1.
4. The Department issued a Verification Checklist (VCL) dated [REDACTED], which requested that the Petitioner contact her specialist immediately with a

current address or phone number where she could be reached. The VCL specified a due date of [REDACTED].

5. The Petitioner did not respond to the verification until after the due date.
6. The Department issued a Notice of Case Action dated [REDACTED], closing the Petitioner's case for failure to verify requested household information was not returned effective [REDACTED]. Exhibit 3.
7. A Health Care Coverage Determination Notice was issued [REDACTED], closing the MA effective [REDACTED]. Exhibit 4.
8. The Petitioner, before the negative action date, filed a hearing request on [REDACTED]. The hearing request was signed by the Petitioner; and she provided an address of [REDACTED]. The Petitioner also provided a phone number where she could be reached.
9. The Department, during the period in question, did not receive any returned mail that it sent to the Petitioner. The Department did not call the Petitioner at the telephone number previously provided by the Petitioner.
10. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department sought verification that the Petitioner was still a resident of Michigan due to an OIG inquiry and request that the Department seek verification from the Petitioner due to out of state FAP benefit use in [REDACTED] beginning in [REDACTED]. Exhibit A. Pursuant to the OIG request, the Department sent the Petitioner a request for verification advising the Petitioner that the Department's efforts to contact her had failed and asking the Petitioner to contact the specialist with a current address or phone number. Thereafter, the Petitioner received the request for verification but did not respond to it by the due date as she was confused and did not read the request

carefully. As explained at the hearing, the verification was clear as to what it requested; however, it incorrectly stated that the Department's efforts to contact the Petitioner had failed as there is no evidence that was the case. However, failure to read the verification carefully or seek clarification is not an excuse to fail to respond to the verification. After the Department did not hear from the Petitioner by the due date, it issued a Notice of Case Action on [REDACTED], closing the Petitioner's FAP and in a separate Health Care Coverage Determination Notice closed the Petitioner's Medical Assistance Case for failure to provide the requested information. Exhibits 3 and 4.

At the hearing the Petitioner stated that she was confused by the verification and admitted she did not timely respond to it. She also testified that she had completed a redetermination in [REDACTED] and did not understand what was needed. The Department also conceded it had no returned mail and did not attempt to reach the Petitioner at the phone number it had in the case record. The Petitioner filed a hearing request on [REDACTED] requesting a hearing regarding the department's closure of her FAP and MA benefits indicating she "just redid paper work [REDACTED]". On the Request for Hearing form the Petitioner also provided the information sought by the verification which was both her address and phone number. At that point the Petitioner had provided all the information that she had been requested to provide by the Department in the [REDACTED] verification. Department policy requires that in this situation the negative action must be deleted and provides:

Bridges automatically calculates the negative action date. The negative action date on Bridges is the day after the timely hearing request date on the Bridges notice of case action.

In this case, the negative action date was [REDACTED]. Department policy further provides that in situations where the Petitioner's required action is completed before the Negative action effective date, the Department is required to delete the negative action. Department policy provides:

If a requirement of the Department is met before the Negative Action Effective date the information the client provided to meet the requirement that cause the negative action, must be entered in bridges and the Negative Action must be deleted. BAM 220, (October 1, 2016), p. 13

The Department must also reactivate the programs and run eligibly and certify the results.

As regards residency, Department policy provides:

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if there is no intent to remain in the state permanently or indefinitely.

A Michigan resident is an individual who is living in Michigan except for a temporary absence.

Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished.

Example:

Individuals who spend the winter months in a warmer climate and return to their home in the spring. They remain MI residents during the winter months. BEM 220 (October 1, 2016), p.1.

During the period prior to the verification request, the Department had not received any returned mail and did not attempt to contact the Petitioner at the phone number it had for Petitioner in their records. At the hearing, the Petitioner credibly testified that she was in [REDACTED] visiting her family and spending time with her grandson and that she was back in Michigan every month to pay rent on and off. This testimony was also confirmed by the Petitioner's landlord's letter presented at the hearing, advising that the Petitioner dropped off her rent check every month during the period in question. Petitioner's Exhibit A. Unfortunately, although the Petitioner did not respond to the VCL in a timely manner, which prompted the Notice of Case Action closing her MA and FAP case, she did provide the Department the requested information with her hearing request, which was received before the negative action date as explained above and, thus, her case must be reinstated. In addition, the Department had a phone number which it never called, thus, had no reason to believe the number was incorrect. The point, however, is the very information requested, a phone number, was already in the Department's possession.

While it is clear from the record presented that the Petitioner did not change her residence, that is not the issue before the undersigned or to be determined in this case as that was not the reason her FAP and MA closed. The closure occurred due to failure to respond to the requested verification in a timely manner. Once she filed her hearing request, the information requested in the verification was available by the negative action date and requires the negative action be deleted.

DECISION AND ORDER

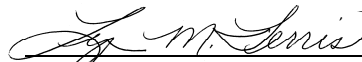
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed the Petitioner's FAP benefits and MA for failure to verify her address.

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall delete the negative action notices closing Petitioner's FAP and MA cases and run eligibility and certify the results.
2. The Department shall issue an FAP supplement if any is due in accordance with Department policy.
3. The Department shall provide written notice to the Petitioner of its determination.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Via email

[REDACTED]